IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3218 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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HIRALAL VITHALBHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3218 of 2002

MR PARESH UPADHYAY for Petitioner No. 1

MR DESAI, AGP, for Respondent No. 1

MR DN PATEL for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/07/2002

ORAL JUDGEMENT

1. The petitioner was working as Deputy Director of Agriculture (Engineering), at Mehsana. By virtue of an order passed by the Government on May 10, 1994 (Annexure-B), he came to be placed under suspension. On

December 5, 1995, he was served with a charge sheet alleging corrupt practices and irregularities by joining hands with other officers and/or employees. The charges stated in the charge sheet can be stated thus:

> "The petitioner committed irregularities by following erroneous procedure and preparing fake documents and cases by joining hands with M/s Suraj Farm Pvt. Ltd. and other employees for gaining benefit of Government subsidy in respect of sprinkler sets during the year 1992-93 without properly verifying the applications and thereby committed breach of Rule 3(1)(1) of the Gujarat Civil Services (Conduct) Rules, 1971."

2. The petitioner submitted his preliminary defence statement on December 22, 1995 and his detailed defence statement on March 19, 1996. Following that, Inquiry Officer came to be appointed, who, after holding an inquiry, submitted a report on 11.7.2994 exonerating the petitioner. The brief of the Presenting Officer (Annexure-H) also indicated that, even according to him, the only involvement of the petitioner was in the nature of forwarding the report to Deputy Director of Agriculture (Extension) which was prepared by and received from the Assistant Agricultural Engineer. Barring this, there was no involvement of the petitioner and, therefore, it was upto the Government to decide as to to what extent the petitioner can be held responsible.

3. Following the report of the Inquiry Officer, an order came to be passed by the Government on October 15, 1997 (Annexure-K) to close the chapter after issuing warning and, thereafter, by virtue of an order passed on January 7, 1998, the petitioner was reinstated as Deputy Director of Agriculture (Engineering), at Rajkot.

4. After about 15 months thereafter, on April 1, 1999, a show cause notice was issued to the petitioner indicating that the Government does not agree with the conclusion arrived at by the Inquiry Officer that the charges against the petitioner are not proved and, therefore, the petitioner may make a written representation, if he so desires within 15 days, before the Government takes any further action. Along with the show cause notice, reasons for disagreement with the report of the Inquiry Officer were also sent, which indicate that the petitioner had accepted the report of the Assistant Agricultural Engineer and forwarded the same to the Deputy Director of Agriculture (Extension), without verifying the same. It was also stated that, in

short, the observations made by the Inquiry Officer, in his report, on pages No.16, 17, 18 and 19 do not justify the conclusion of the Inquiry Officer that the charges against the petitioner are not proved. The petitioner sent his reply to the show cause notice on May 3, 1999 (Annexure-M). Upon receiving the reply, the impugned order (Annexure-A) came to be passed on July 23, 2001. By the time this order came to be passed, the petitioner had superannuated from service and, therefore, it was ordered that an amount of Rs.50/be deducted from his pension for a period of one year by way of punishment as he is found to be guilty. It is also stated that the said decision was taken in consultation with G.P.S.C. Aggrieved by the said order, the petitioner has approached this Court seeking following main reliefs :-

"(A) quash and set aside the impugned order dated 23.7.2001, Annexed-A to this petition, and

(B) quash and set aside the show cause notice dated 1.4.1999 Annexure-L to this petition, and

(C) direct the authorities to consider the period of suspension from 16.5.1994 to 15.10.1997, as duty period for all purposes, with all consequential benefits,"

5. It is contended by the petitioner that the impugned order dated July 23, 2001 of reducing the pension is without any authority of law; that it is arbitrary; that it is passed after a gross delay; and that it reflects total non-application of mind. It is contended that the relevant documents have not been supplied to the petitioner including the correspondence that may have been received from GPSC, although it is claimed by the authorities that the order is passed in consultation with GPSC.

6. Learned Advocate Mr. Upadhyay appearing for the petitioner has drawn attention of this Court to various aspects to indicate that the order in question suffers from the defect of lack of authority, non-application of mind and that, on merits also, the order could not have been passed. He also contended that, although the punishment seems to be light, it has far reaching effects. He submitted that by holding that the charges against the petitioner are proved and inflicting punishment, the respondent-authoritiy has successfully been able to affect the pensionary benefits of the petitioner so also the pay for the period of suspension. The petitioner also would be deprived of the benefits of

pay revision as on 1.1.1996 if this order is allowed to stand.

6.1 Mr. Upadhyay submitted that from the very beginning, the petitioner's case has been that he is nowhere involved in the scheme. The scheme of the Government casts no duty on the petitioner. All that the petitioner has done is that he has forwarded the reports received from the Assistant Agricultural Engineer to the Deputy Director of Agriculture (Extension), under whom the scheme floated by the Government was to operate. It was not the duty of the petitioner either to receive the application or to process the same or to verify the installation of the sprinkler sets or to sanction the subsidy and, therefore the charges that are levelled against the petitioner were found to have been not proved not only by the Inquiry Officer but also by the Presenting Officer of the Department. The Government acted on the report of the Inquiry Officer and decided to close the chapter and reinstate the petitioner. After about 15 months thereafter, in spite of closure of the chapter, the show cause notice was issued. The petitioner has once again indicated that he is nowhere involved in the picture. Despite that, the order in question is passed. Mr. Upadhyay submitted that, if the authority concerned had applied mind and had perused the papers, this order would not have been passed for the reason that no duty is cast on the petitioner, he has played no role either in receiving the applications, processing the applications, verifying the same or sanctioning the same. All that is stated for differing from the report of the Inquiry Officer is that the petitioner accepted the certificates of the Assistant Agricultural Engineer without verifying. Mr. Upadhyay submitted that this is, at the most, a supervisory lapse, for which no charge sheet was issued. The charge sheet was for deliberate misconduct of preparing false documents by joining hands with officers and, therefore, the order may be quashed and set aside and the reliefs sought by the petitioner may be granted.

6.2 Mr. Upadhyay submitted that the affidavit-in-reply goes contrary to the case of the authorities from the beginning and its record. The Under Secretary, in his affidavit, has stated that the petitioner was involved in irregularity in sanctioning the sprinkler set in the year 1992-93. It is also stated in the affidavit that the petitioner was involved in serious irregularities whereby the petitioner, by joining hands with one private firm, namely, M/s Suraj Farms Pvt. Ltd., has wrongly prepared some concocted case and

prepared false documents without properly perusing the papers and was, thus, involved in wrongly giving Government subsidies to the private firm and has committed serious irregularities. Mr. Upadhyay submitted that, all these averments in the affidavit-in-reply are not supported by any documents and this itself indicates non-application of mind. Mr. Upadhyay, therefore, urged that the petition may be allowed.

7. In reply to the contentions raised by the petitioner, learned Assistant Government Pleader, Mr. Desai, tried to support the order. He submitted that the reasons for differing from the report of the Inquiry Officer, as indicated in Annexure-L, clearly reveal that the conclusion arrived at by the Inquiry Officer was not in consonance with his findings and observations in the report and, therefore, the authorities differed from his conclusion that the charges against the petitioner were not proved. Mr. Desai took this Court through the relevant portions of the report of the Inquiry Officer. Mr. Desai submitted that, according to the rules of business, the decision in respect of the petitioner was verified and taken at various stages and levels right upto to the highest office in the Government. Mr. Desai submitted that, even according to the Inquiry Officer, the entire process was done within two days, i.e. on the 30th and 31st March, 1993. The petitioner, though directed by Deputy Director of Agriculture (Extension) to verify the application, had not done so and also had not verified the certificate issued by the Assistant Agricultural Engineer, which indicates that this undue haste was with oblique motive and, therefore, a decision was taken to differ from the conclusion of the Inquiry Officer and to serve the petitioner with show cause notice. Mr. Desai submitted that, if a subordinate officer is found to be indulging in irregularities, it is the duty of the supervisory officer to administer proper supervision and rectify the error or irregularity. The petitioner has failed in doing so and, therefore, he is found to be guilty and is meted out with the punishment. Mr. Desai, therefore, urged that the petition may be dismissed. Having regard to peculiar facts and circumstances of the case and contentions raised before this Court, matter requires consideration. Hence, Rule.

8. Again, in view of peculiar facts of the case, by consent, matter is taken up or final hearing and disposal.

9. Having regard to the contentions raised before

this Court, it has to be recorded, at the outset, that the order in question cannot be sustained from any point of view. Firstly, the order does not reflect clearly as to what are the charges found to have been proved against the petitioner; secondly, what is found to have been not done by the petitioner was not required to be done by the petitioner; thirdly, what is found to have been not done by the petitioner was not the charge against him; and fourthly, the entire action against the petitioner suffers from non-application of mind.

10. The scheme under which the subsidy for the sprinklers was to be given is part of Annexure-M. It was floated on the 12th December, 1991 by resolution No.PYT/5289/48181/K-5. This Court is at loss to find any duty or responsibility cast on Deputy Director of Agriculture (Engineering). The entire scheme is to be governed, monitored or implemented by Deputy Director of Agriculture (Extension). The applications were to be received, processed and sanctioned by Deputy Director of Agriculture (Extension) and, therefore, it is difficult to understand as to how the petitioner can be said to have joined hands with private parties and other officers, prepared false documents and sanctioned subsidy to private parties, which are the charges levelled against him. The Inquiry Officer rightly exonerated him of those charges. This Court has gone through the entire report of the Inquiry Officer as well as the brief of the Presenting Officer. All that is found by the Inquiry Officer is that the petitioner committed an error in accepting the certificate issued by the Assistant Agricultural Engineer, but there is no involvement of the petitioner in any other manner. Simply because certificates were forwarded immediately by the petitioner to Deputy Director of Agriculture (Extension) on the same day, no inference can be drawn against the petitioner about his either dereliction in duty or negligence or malpractice, as has been done by the respondent authorities while passing the impugned order.

11. The reasons for differing from the report of the Inquiry Officer (Annexure-L) also indicate that even according to the authority, the petitioner accepted the certificates without verifying and that was his error and for arriving at this conclusion, it is indicated that observations made by the Inquiry Officer on pages 16, 17, 18 and 19 of his report do not justify his conclusion, meaning thereby that the authorities found that the petitioner had erred in accepting the certificates without verifying. The impugned order only states that the punishment is inflicted keeping in light the charges

proved against him. In fact, the charges were not for lack of supervision. Even the first order of suspension also reflects that the charges were as indicated in the charge sheet. The result is that the petitioner is given a punishment for lack of supervision without affording any opportunity to him to tender an explanation in this regard. Even according to the authority, the charges which are found to have been established are only those as indicated from the show cause notice and the impugned order as well as earlier order of suspension, unfortunately though the Under Secretary to Agriculture Department has come out with a case in his affidavit-in-reply, wherein he states - "I state that the petitioner herein was involved in the irregularity in sanctioning the sprinkler set in the year 1992-93". This Court could not find nor could the learned Assistant Government Pleader indicate any provision authorising the petitioner to sanction the subsidy for sprinkler sets. It is also nowhere to be found that the petitioner was involved in the irregularity in sanctioning sprinkler sets, as discussed above. There is absolutely no evidence in this regard and still this affidavit!!

11.1 The affidavit also states - "I further state that the Inquiry Officer has prepared his inquiry report, whereby the Inquiry Officer has come to the conclusion that the charges levelled against the petitioner are not true. However, the answering respondent was of the opinion that the petitioner herein was involved in serious irregularities, whereby, the petitioner by joining hands with one private firm, namely, M/s Suraj Farms Private Limited has wrongly prepared some concocted case and prepared false documents without properly perusing the papers and was thus involved in wrongly giving Government subsidies to the private firm and has committed such serious irregularity". As state above, there is absolutely nothing to indicate that the petitioner had joined hands with a private firm - M/s Suraj Farms Private Limited, there is absolutely nothing to indicate that he had wrongly prepared some concocted case and had prepared false documents without perusing the papers. The conclusion of the deponent that he was involved in serious irregularities does not seem to have any basis and the respondents have not been able to indicate any justification or support for this statement on oath. It is a sorry state of affair that a senior and responsible officer of the Government comes out with such an affidavit not supported by any material or evidence. The conclusions cannot even be considered as legitimate inferences. The authorities in the Government, it hoped, will take appropriate steps to ensure that such

affidavits are avoided least it may result into some action for such affidavits with incorrect facts against the concerned deponent.

12. Special attention of this Court was drawn by learned Assistant Government Pleader towards a paragraph in the report of the Inquiry Officer, wherein it is observed by the Inquiry Officer that the entire procedure was done within two days which is impossible and, therefore, this was done with premeditation in conspiracy with other employees. In that very paragraph, it is observed the application was sent on the 30th March, 1993. It was received by the Assistant Engineer on the 30th itself and the Assistant Agricultural Engineer presented the certificates which were forwarded by the petitioner to Deputy Director of Agriculture (Extension) on the 31st without verification, which is not proper. The learned Assistant Government Pleader was at loss to indicate as to wherefrom it was expected of the petitioner to verify the certificates which were supposed to be issued by the Assistant Agricultural Engineer and forwarded to the Deputy Director of Agriculture (Extension) as per clause (9) of the scheme dated 18.12.1991 and, therefore, from this paragraph of the report of the Inquiry Officer also, it is not possible to inquire either that the petitioner was involved in any corrupt practices as alleged or that there was any dereliction in his supervisory duty. It is also relevant to note that this procedure was performed during the last two days of the accounting year 1992-93.

13. The learned Assistant Government Pleader was also at loss to indicate as to how the show cause notice could have been issued once a decision was taken by the Government to close the chapter by issuing warning to the petitioner.

14. For the foregoing reasons, the order impugned deserves to be quashed and set aside. The petition, therefore, deserves to be allowed. The petition is allowed. The order dated the 23rd July, 2001, inflicting a punishment of deduction of Rs.50/- from pension of the petitioner for a period of one year (Annexure-A) is quashed and set aside so also the show cause notice dated 1.4.1995 (Annexure-L) as the same is found to have been issued in absence of any material for differing from the report of the Inquiry Officer. The petitioner, as a necessary consequence, would stand exonerated from the charges and would be entitled to all consequential benefits. Rule is made absolute with no orders as to

costs.

15. After the above dictation is over, learned Assistant Government Pleader Mr. Desai states on instructions that operation of this order may be suspended for a period of three weeks as the respondent-authorities would like to approach the higher forum. The said request is rejected.

[A.L. DAVE, J.]

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